IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2684 of 2006

The Commissioner of Income Tax
Coimbatore. .. Appellant

Vs.

M/s.Coimbatore Popular Spinning
Mills Ltd., No.657, D.Tristar Towers
Avinashi Road, Coimbatore. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 19.5.2006 made in ITA No.1446/Mds/2005 for the assessment year 1994-95 against the order of the Commissioner of Income Tax (Appeals) - I, Coimbatore in ITA No. 344/2000-1 dated 14.3.2005 against the order of Additional Commissioner of Income Tax Special Range I, Coimbatore in PAN/GIR-CQ-2218, dated 12.1.2001.

For Appellant : Mr.N.Muralikumaran
Sr.Standing Counsel (Taxes)

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 19.5.2006 made in ITA No.1446/Mds/2005 for the assessment year 1994-95.

2. The Revenue is the appellant. The issue raised in this appeal relates to the assessment year 1994-95. The Assessing Officer, on completing the assessment, disallowed the claim of the assessee in respect of replacement cost of machineries and treated the same as capital expenditure. Aggrieved, the assessee went on appeal and the Commissioner of Income-tax (Appeals) held in favour of the assessee. The Revenue took up the issue before the appellate Tribunal and the Tribunal held the issue in favour of the

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assessee. Hence, this appeal by the Revenue raising the following questions of law:-

> "1. Whether the replacement of machinery parts will amount to revenue expenditure or not? and
>
> 2. Whether bringing into existence of a new asset or obtaining a new advantage would amount to revenue expenditure or not?

4. Mr.N.Muralikumaran, learned Senior Standing Counsel for the appellant fairly concedes that the issues raised in this appeal are covered against the Revenue in view of the decision of this Court in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD., [2005] 275 ITR 403.

5. The question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Appellate Tribunal, finding that replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

6. This Court, in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD., referred supra, held that all plant and machinery put together amounts to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced.

7. The above view was also taken by this Court in Commissioner of Income Tax v. Loyal Textile Mills Ltd., [2006] 284 ITR 658.

In view of the ratio laid down by this Court in the decisions cited supra, no substantial question of law arises for our consideration in this appeal and therefore, the same is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1.The Income Tax Appellate Tribunal
Madras Bench "D". Chennai.

2.The Commissioner of Income
Tax (Appeals-I), Coimbatore.

3.The Additional Commissioner of
Income Tax, Spl Range-I
Coimbatore.

4. The Asst Registrar,
Income Tax Appellant Tribunal,
Besand Nagar, Rajaji Bhavan,
Chennai90.

5. The Commissioner of Income Tax, Coimbatore.

+ 1 cc to Mr. N. Muralikumaran, Advocate Sr.Sc for IT (SR No. 63473

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SR/12.1.2007

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